

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Roderick L. Hymon,
Plaintiff
v.
Carrol Doe, et al.,
Defendants

Case No.: 2:23-cv-1765-JAD-BNW

**Order Addressing Untimely Objection and
Extending Deadline to File Amended
Complaint**

[ECF Nos. 3, 11]

Pro se plaintiff Roderick L. Hymon filed this § 1983 action against various private-citizen defendants for allegedly breaking into his apartment, robbing him, and causing him physical harm. He also alleges that the police refused to investigate the incident.¹ The magistrate judge screened Hymon's complaint and found that his claim cannot proceed against the private citizens who robbed him because § 1983 claims can only be brought against state actors.² She also determined that Hymon's cause of action against the police officer for failing to investigate doesn't state a cognizable claim. So she dismissed Hymon's complaint without prejudice and gave him 30 days to file an amended complaint for those claims that were capable of amendment. But because any amendment to Hymon's claim against the police officer would be futile, she recommended that it be dismissed with prejudice.³ Hymon appealed the magistrate judge's order⁴ and did not file an amended complaint by the deadline. And because he did not

¹ ECF No. 3 at 2 (citing ECF No. 1-1).

² *Id.* at 3.

³ *Id.* at 3–4.

⁴ The Ninth Circuit dismissed Hymon's appeal because the order challenged wasn't final. ECF No. 10.

1 object to the magistrate judge’s report and recommendation, so I adopted it in its entirety and
 2 again directed Hymon to file an amended complaint if he wished to pursue his claims.⁵

3 On December 21, 2023, Hymon filed a one-paragraph objection to the magistrate judge’s
 4 order and report and recommendation.”⁶ He states that he objects “especially where I stated the
 5 police refuse to assist me.” He also claims that he didn’t receive the report and recommendation
 6 until December 15, 2023.⁷ I overrule Hymon’s objections and give him one more chance to file
 7 an amended complaint if he can correct the deficiencies identified in the magistrate judge’s
 8 order.

9 A district judge may designate a magistrate judge “to hear and determine any pretrial
 10 matter pending before the court” (like a request for court-appointed counsel) or to recommend
 11 how the district judge should rule on a dispositive issue (like dismissal).⁸ When a litigant
 12 challenges a magistrate judge’s ruling on a non-dispositive matter, the district judge may
 13 reconsider that ruling “when it has been shown that the magistrate judge’s order is clearly
 14 erroneous or contrary to law.”⁹ This standard of review “is significantly deferential” to a
 15 magistrate judge’s determination¹⁰ and requires “a definite and firm conviction that a mistake [of
 16 fact] has been committed”¹¹ or a relevant statute, law, or rule has been omitted or misapplied.¹²

18 ⁵ ECF No. 9.

19 ⁶ ECF No. 11.

20 ⁷ *Id.*

21 ⁸ 28 U.S.C. § 636 (b)(1); Local Rule (L.R.) IB 3-1.

22 ⁹ L.R. IB 3-1(a).

23 ¹⁰ *Concrete Pipe and Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 623 (1993).

¹¹ *Id.* (internal quotation marks omitted).

¹² See *Grimes v. City and Cnty. of S.F.*, 951 F.2d 236, 240–41 (9th Cir. 1991).

1 When a litigant objects to a magistrate judge's report and recommendation on a dispositive issue,
 2 the district judge's review is instead de novo.¹³

3 Objections to report and recommendations are due 14 days after the order is served.¹⁴
 4 Hymon's objection was filed almost a month late. I am skeptical of his claim that he didn't
 5 receive the report and recommendation until December 15, 2023, since he filed an appeal of the
 6 order on November 22, 2023.¹⁵ But in the interest of being thorough, I consider his untimely
 7 objection.

8 Hymon's one-paragraph filing does not identify any findings by the magistrate judge that
 9 he contends are mistaken, erroneous, or contrary to law. He merely states that he "especially"
 10 objects to some portion of the recommendation "where I stated the police refuse to assist me."¹⁶
 11 Hymon's statement doesn't direct me to the portion of the recommendation that he claims is
 12 erroneous, nor does it explain *why* he believes it is erroneous. So I overrule his objections.

13 Conclusion

14 IT IS THEREFORE ORDERED that Roderick Hymon's objection to and appeal of the
 15 magistrate judge's order and report and recommendation dismissing his complaint with leave to
 16 amend [ECF No. 11] is **OVERRULED**. Hymon must file an amended complaint curing the
 17 deficiencies identified in the magistrate judge's order by **March 22, 2024**. **The failure to file an**
 18 **amended complaint may result in the dismissal of this case without further notice.**

19 
 20 U.S. District Judge Jennifer A. Dorsey
 February 21, 2024

21 _____
 22 ¹³ Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(B); L.R. IB 3-2(b).

23 ¹⁴ L.R. IB 3-1(a).

¹⁵ See ECF No. 5.

¹⁶ ECF No. 11.